IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8642 of 2005

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARAT BABUBHAI PARMAR - Petitioner(s)
Versus
UNION OF INDIA THR' ITS COMMISSIONER & 1 - Respondent(s)

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Appearance :
MR MS RAO for Petitioner(s) : 1,
MR JITENDRA MALKAM, ASS.SOLICITOR GENERAL for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 14/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned Counsel Shri Rao for the

petitioner and learned Assistant Solicitor General Shri Jitendra Malkan for the respondents.

Shri Bharatbhai Babubhai Parmar, father of the present petitioner, died on 11.8.1999 at the age of 52, while on duty, leaving behind him his widow and four sons (including the petitioner) and one daughter. On his death his widow applied on 16th December, 1999 to the respondent Authority for giving appointment to her son – present petitioner on compassionate ground. However, the request was rejected, by an order dated 23.9.2004, by the respondent Authority. Therefore, the petitioner approached the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad (for short “Tribunal”) by way of OA No.528/04, which was rejected by the learned Tribunal by its impugned Judgment and order dated 4th March, 2005. Hence, this petition.

At the out-set, we may state that though the petition is labelled both, under Article 226 & 227 of the Constitution, strictly speaking, it is a petition under Article 227 of the Constitution, the scope of which is very narrow and limited. This Court can not interfere with the impugned order of Tribunal either on facts or on law as held by the Hon'ble Supreme Court in umpteen number of its decisions. This Court can interfere only if jurisdictional error is there which is none in the instant case. Therefore, on this short ground the petition was required to be rejected.

Even otherwise the petitioner has no case. From

the impugned Judgment and order passed by the learned Tribunal it is clear that in proforma sent with details in 1999 it was clearly mentioned that the petitioner, along with his three brothers and sister, were staying with their widow mother, who was employed as Primary School Teacher and earning Rs.9,312/- per month. In addition to it she was getting pension of Rs.4050/- per month including DA and other benefit. Thus, according to the Tribunal the family was getting Rs.15,468/- per month. However, Shri Rao for the petitioner submitted that the learned Tribunal was wrong in taking into consideration the pension amount of Rs.4050/-. It is true that as held by the Hon'ble Supreme Court the pension amount should not have been taken into consideration by the Tribunal for rejecting the petition. However, that is not the only ground on which the learned Tribunal has rejected the petition. As stated earlier, the learned Tribunal has clearly found that the widow mother was employed in Government School and earning Rs.9,312/- per month. Thus, it cannot be said that the family of deceased Babubhai was in penurious condition. It appears that in proforma filed, initially in 1999, they stated that the entire family was staying together with widow, but later on they had changed the stand and submitted that his mother is not looking after them and, therefore, the petitioner – applicant with other family members of deceased Babubhai were in penurious condition.

In the instant case Babubhai died on 11.9.1999 and the claim for appointment on compassionate ground of the petitioner was rejected on 23.9.2004. Thereafter the petitioner approached the tribunal by way of Application which was rejected in March, 2005. Therefore, he filed this present petition which was admitted and today it is being heard i.e. after a period of more than 7 years of the death of deceased. The whole object of granting compassionate appointment is to see that the family of deceased person may survive from sudden crises. The very fact that the family of the deceased survived for all these years would go to show that the family of deceased was not in penurious condition and must be very well maintained by widow of the deceased from her salary income which was almost Rs.10,000/- p.m.

In any case the compassionate appointment is not a matter of right. If the Authority is not satisfied on the facts of the case and when, on facts of this case, the Tribunal has refused to exercise discretion in favour of the petitioner – applicant in an Application filed before it then certainly this Court, in its limited jurisdiction under Art. 227 of the Constitution, would not interfere with such limited jurisdiction.

In view of the above, this petition fails and is hereby dismissed. Rule discharged. No order as to costs.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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